

Decision 02-11-002 November 5, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Electric Lightwave, Inc.
(U-5377-C) For Authorization Pursuant to
Section 854 Of the California Public Utilities Code
To Convert to a Limited Liability Company.

Application 02-09-027
(Filed September 23, 2002)

O P I N I O N

1. Summary

This application seeks approval under Pub. Util. Code § 854 of a transaction that will convert Electric Lightwave, Inc. (ELI), a “C” corporation, to a limited liability company. The transaction is structured to take effect upon approval of this Commission. The application is unopposed, and is granted.

2. Description of Applicant

ELI, a Delaware corporation with offices in Vancouver, Washington, is a non-dominant telecommunication carrier that was granted authority to provide resold and facilities-based intraLATA and interLATA telecommunications services in Decision (D.) 94-03-073 (high-speed private lines services), D.95-09-115 (low-speed private line services and switched toll services), D.95-12-057 (facilities-based, local exchange authority), and D.96-02-072 (local exchange resale authority).

ELI is a wholly owned subsidiary of CU CapitalCorp, and CU CapitalCorp is a wholly owned subsidiary of Citizens Communications Company (CZN),

which is publicly traded on the New York Stock Exchange. ELI and CZN are Delaware companies.

3. Description of Transaction

Applicant states that the proposed conversion does not involve the transfer of any property, franchises, permits, or operative rights. The conversion will not result in any transfer of control. The conversion will not affect any of ELI's services or construction activities and will be transparent to ELI's California customers. The conversion will result only in the change in the form of organization from a corporation to an LLC pursuant to Section 266 of the Delaware General Corporation Law (Delaware Code Title 8) and Sections 18-214 of the Delaware Limited Liability Company act (Delaware Code Title 6, Chapter 18), which will simply be viewed as a continuation of the existing entity with a different governance structure.

Under both Delaware and California law, the conversion of a corporation into an LLC results in the rights, privileges, duties, or obligation of the entity, and the LLC is regarded as being a continuation of the corporation. Section 266(a) of the Delaware General Corporation Law (Delaware Code Title 8) permits a conversion of a domestic corporation into other entities, including a Delaware LLC. The conversion is effected by filing a certificate of conversion certifying that the conversion was approved by the corporation's board of directors and all outstanding stockholders of the corporation (§ 26(b)) and the filing of a certificate of formation.

In accordance with Delaware law, the conversion of a corporation to an LLC will not "affect any obligations or liabilities of the corporation incurred prior to such conversion or the personal liability of any person incurred prior to such conversion." Section 266(e) states that, after the certificate of conversion becomes

effective, “the corporation shall continue to exist as a limited liability company” and § 266(f) provides that, unless the corporation elects otherwise, “the converting corporation shall not be required to wind up its affairs or pay its liabilities and distribute its assets, and the conversion . . . shall constitute a continuation of the existence of the converting corporation.”

Applicant notes that California law permits the conversion of other business entities into an LLC and vice versa. Sections 17540.1 *et seq.* of the California Corporation code provide that an entity that converts into another entity pursuant to the code is for all purposes the same entity that existed before the conversion.¹

Applicant states that even though it is clear that the conversion will not result in a “transfer of the action or working control” requiring the Commission to determine if the acquiring entity is capable of carrying public utility obligation, ELI files the application out of an abundance of caution given that the Commission as recently as January 11, 2000 approved a similar transaction in D.00-01-036.

4. Public Interest

Applicant states the conversion will ensure that ELI continues to provide service to its customers at the same or improved levels and will in no way impact or impede the completion of ELI’s fiber optic network facilities in California. Also the conversion will benefit ELI by offering the potential to streamline the formalities associated with the governance of the company.

¹ See Cal. Corp Code § 17540.9.

5. Discussion

Pub. Util. Code §§ 851-854 require Commission authorization before a company may “merge, acquire, or control . . . any public utility organized and doing business in this state” The purpose of these sections is to enable the Commission to review the situation, before any transfer of public utility property is consummated, and to take such action, as a condition of the transfer, as the public interest may require. (San Jose Water Co., (1916) 10 CRC 56.)

This conversion to a limited liability company will not affect ELI’s certificate of public convenience and necessity. Management will remain the same. Financial documents filed with the application show that ELI continues to meet the financial requirements imposed on new telecommunications entrants.

As demonstrated by the financial documents attached as Exhibit B to the application, ELI has gross annual California revenues well below \$500,000,000.00. Accordingly, Section 854(b)(c) of the California Public Utilities Code is inapplicable, and the application qualifies for expedited ex parte approval by the Executive Director.

The proposed transfer promises improved efficiency for Applicant, which can enhance Applicant’s ability to provide telecommunications services to its customers. No changes in the existing services of ELI are proposed.

There have been no protests to this application, and the contemplated change from a “C” corporation to a limited liability company appears to be noncontroversial. The application requests expedited approval of the application. Expedited approval may be granted by the Executive Director pursuant to authority delegated to him by the Commission to grant “noncontroversial applications for authority to transfer assets or control under [Pub. Util.] Code §§ 851-855” (CAWC, Inc. (1987), D.87-04-017; *see also* D.86-08-057.)

In Resolution ALJ 176-3096, dated October 3, 2002, the Commission preliminarily categorized this proceeding as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3096.

The application is granted, subject to the terms and conditions set forth below.

6. Assignment of Proceeding

Henry Duque is the Assigned Commissioner and Dean Evans is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Notice of this application appeared in the Commission's Daily Calendar of September 25, 2002.
2. Applicant seeks approval pursuant to Pub. Util. Code § 854 of a transaction that will convert ELI from a "C" corporation to a limited liability company.
3. ELI will continue to provide telecommunications services in California.
4. ELI continues to meet the Commission's financial requirements for new telecommunications entrants.
5. ELI is a Delaware corporation with offices in Vancouver, Washington.
6. There will be no change in name, current services, or rates provided by ELI as a result of the conversion.

Conclusions of Law

1. The proposed conversion is in the public interest.
2. This proceeding is designated a ratesetting proceeding; no protests have been received; no hearing is necessary.

3. The application is noncontroversial and may be granted by the Executive Director pursuant to authority delegated by the Commission.
4. The application should be approved.

O R D E R

IT IS ORDERED that:

1. Electric Lightwave, Inc. (ELI) is authorized pursuant to Section 854 of the Public Utilities Code to convert from a "C" corporation to a limited liability company, as more fully described in the application and its exhibits.
2. Applicant shall notify the Director of the Commission's Telecommunications Division in writing of the transfer of authority, as authorized herein, within ten days of the date of consummation of such conversion. A true copy of the instruments of transfer shall be attached to the notification.
3. ELI shall make all books and records available for review and inspection upon Commission staff request.
4. The authority granted herein shall expire if not exercised within one year of the date of this order.
5. Application 02-09-027 is closed.

This order is effective today.

Dated November 5, 2002, at San Francisco, California.

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director